

A Public Prosecutor v Romika bin Che Kamarulzaman & Anor

B COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL
NO W-05-219-05 OF 2025
AZMAN ABDULLAH, MOHAMED ZAINI MAZLAN AND NOORIN
BADARUDDIN JJCA
3 OCTOBER 2025

C *Criminal Procedure — Police investigation — Remand — Whether s 117 of Criminal Procedure Code obligated investigating officer ('IO') in charge of case to attend before magistrate if he/she wished to apply for remand order — Whether IO could not delegate that task to another officer — Whether Practice Direction No 11 of 2021 reinforced the statutory position under s 117 — Whether integrity of remand proceedings or rights of accused were not compromised if IO in charge of case did not attend before magistrate to apply for the remand*

D

E The respondents were arrested by the police on suspicion of committing offences under s 30(3) of the Poisons Act 1952 and s 15(1)(a) of the Dangerous Drugs Act 1952. The investigating officer ('IO') assigned to the case was not the one who appeared before the magistrate the following day to seek a remand order against the respondents under s 117 of the Criminal Procedure Code ('the CPC'). Instead, another officer appeared on the IO's behalf to apply for the remand order. The magistrate allowed the application and ordered the respondents to be remanded for two days to facilitate investigations. On the respondents' solicitor's application, the High Court in exercise of its revisionary powers set aside the remand order for violation of s 117 of the CPC. The court held that the strict wordings in s 117 required the IO in charge of the case to personally appear before the magistrate to apply for the remand order and that he/she could not delegate that task to another officer. In the instant appeal against the decision, the appellant submitted that the High Court's ruling was impractical and created operational difficulties for the police force as IOs had busy schedules and could not always appear in remand proceedings for their cases. The appellant submitted that so long as the essential requirements in s 117 of the CPC and in Practice Direction No 11 of 2021 were complied with, any police officer who was sufficiently apprised of the facts of the case should be allowed to move an application for remand. The appellant further submitted that nothing in s 117 obliged the IO in charge of a case to be present before the magistrate for remand proceedings and that the IO was only required to:

F

G

H

I (a) transmit to the magistrate a copy of the entries in the police diary relating to the case, and (b) produce the accused before the magistrate.

Held, unanimously allowing the appeal and setting aside the decision of the High Court:

- (1) Section 117 of the CPC did not in express terms or by necessary implication stipulate that the IO for the case must personally attend before the magistrate and present the application for remand. The wordings in s 117 did not show that Parliament intended to make the physical presence of the IO mandatory. The statutory duty of the IO under s 117 was confined to two specific obligations: (a) to transmit to the magistrate a copy of the relevant entries in the police diary; and (b) to ensure that the accused was produced before the magistrate (see para 28).

A
B
- (2) There were, likewise, no express provisions in Practice Director No 11 of 2021 requiring the presence of the IO during remand proceedings. The Practice Direction reinforced the statutory position under s 117 of the CPC (see para 31).

C
- (3) The absence of the IO during remand proceedings did not jeopardise the liberty of the accused or undermine the constitutional guarantees provided under art 5 of the Federal Constitution. It was important to note that s 117 of the CPC included safeguards designed to protect individuals against arbitrary detention. The requirement for the accused to be present before the magistrate, the obligation on the part of the police to submit relevant diary entries under s 119 of the CPC and the duty of the magistrate to document reasons in writing if a remand order was granted collectively served as a check and balance against any abuse of power (see para 32).

D
E
- (4) The absence of the IO at the remand hearing did not compromise the integrity of the process or disadvantage the accused. Accused persons were protected by the statutory and constitutional safeguards embedded in the law and their rights were not diminished due to the IO's physical absence. What was crucial was that the remand application was backed by lawful and adequate grounds, subject to the magistrate's independent judicial assessment of the application and the supporting materials. The entries in the police diary, submitted in accordance with the CPC, formed the central basis for the magistrate's determination of whether further detention was warranted (see paras 33–34).

F
G
- (5) There was no merit in the argument that allowing officers other than the IO to handle the remand application would undermine individual liberty or promote the practice of 'arrest first, investigate later'. This argument failed to recognise that the essential safeguards depended on judicial oversight by the magistrate rather than the personal presence of the IO. As long as the statutory requirements were met and the magistrate was in a position to exercise informed judicial discretion, the fairness and integrity of the process were preserved (see para 37).

H
I
- (6) There would inevitably be situations where the IO in charge of a case was unable to appear personally before the magistrate to support a remand

A application. To insist that only the IO directly assigned to the case should conduct the proceedings would be impractical and unduly burdensome and could disrupt the smooth administration of the criminal justice system, impair the operational efficiency of the police force and ultimately hinder the investigation process (see para 40).

B

[Bahasa Malaysia summary]

C Para responden telah ditangkap oleh pihak polis kerana disyaki melakukan kesalahan di bawah seksyen 30(3) Akta Racun 1952 dan s 15(1)(a) Akta Dadah Berbahaya 1952. Pegawai penyiasat ('IO') yang ditugaskan untuk kes tersebut bukanlah pegawai yang hadir di hadapan majistret pada keesokan harinya untuk memohon perintah reman terhadap para responden di bawah s 117 Kanun Tatacara Jenayah ('KTJ'). Sebaliknya, seorang pegawai lain telah hadir bagi pihak IO untuk membuat permohonan perintah reman tersebut.

D Majistret membenarkan permohonan itu dan memerintahkan para responden direman selama dua hari bagi tujuan siasatan. Atas permohonan peguamcara responden, Mahkamah Tinggi dalam melaksanakan kuasa semakan telah mengenepikan perintah reman tersebut atas alasan berlaku pelanggaran s 117 KTJ. Mahkamah memutuskan bahawa perkataan dalam s 117 mewajibkan IO

E yang mengendalikan siasatan hadir secara peribadi di hadapan majistret untuk memohon perintah reman dan tugas tersebut tidak boleh diberikan kepada pegawai lain. Dalam rayuan ini terhadap keputusan itu, perayu berhujah bahawa keputusan Mahkamah Tinggi adalah tidak praktikal dan menimbulkan kesulitan operasi bagi pasukan polis kerana IO mempunyai

F jadual tugas yang padat dan tidak semestinya berupaya hadir dalam semua prosiding reman bagi kes mereka. Perayu berhujah bahawa selagi keperluan asas dalam s 117 KTJ dan Arahan Amalan No 11 Tahun 2021 dipatuhi, mana-mana pegawai polis yang mengetahui tentang fakta kes seharusnya dibenarkan untuk mengemukakan permohonan reman. Perayu juga berhujah

G bahawa tiada apa-apa dalam s 117 yang mewajibkan IO hadir secara fizikal di hadapan majistret, dan bahawa IO hanya dikehendaki untuk: (a) mengemukakan kepada majistret satu salinan catatan diari polis berhubung kes tersebut, dan (b) membawa tertuduh kepada majistret.

H **Diputuskan**, sebulat suara membenarkan rayuan dan mengenepikan keputusan Mahkamah Tinggi:

I (1) Seksyen 117 KTJ tidak, sama ada melalui peruntukan jelas atau implikasi yang perlu, menetapkan bahawa IO bagi sesuatu kes mesti hadir secara peribadi di hadapan majistret dan mengemukakan permohonan reman. Perkataan dalam s 117 tidak menunjukkan bahawa Parlimen berhasrat menjadikan kehadiran fizikal IO sebagai mandatori. Kewajipan statutori IO di bawah s 117 terhad kepada dua tanggungjawab khusus: (a) mengemukakan kepada majistret satu salinan catatan berkaitan dalam diari polis; dan (b) memastikan tertuduh dibawa dan dikemukakan di

- hadapan majistret (lihat perenggan 28). A
- (2) Tiada juga sebarang peruntukan jelas dalam Arahan Amalan No 11 Tahun 2021 yang mewajibkan kehadiran IO semasa prosiding reman. Arahan Amalan tersebut mengukuhkan kedudukan statutori di bawah s 117 KTJ (lihat perenggan 31). B
- (3) Ketiadaan IO semasa prosiding reman tidak menjejaskan kebebasan tertuduh atau menafikan jaminan perlembagaan yang diberikan di bawah perkara 5 Perlembagaan Persekutuan. Adalah penting untuk diperhatikan bahawa s 117 KTJ mengandungi langkah perlindungan yang direka untuk melindungi individu daripada penahanan sewenang-wenangnya. Keperluan supaya tertuduh dikemukakan di hadapan majistret, kewajipan pihak polis untuk mengemukakan catatan diari relevan di bawah s 119 KTJ, serta kewajipan majistret untuk merekodkan alasan secara bertulis jika perintah reman diberikan berfungsi sebagai mekanisme semak dan imbang terhadap kemungkinan penyalahgunaan kuasa (lihat perenggan 32). C D
- (4) Ketiadaan IO dalam pendengaran reman tidak menjejaskan integriti proses atau meletakkan tertuduh dalam keadaan yang memudaratkan. Tertuduh dilindungi oleh jaminan undang-undang dan perlembagaan yang termaktub dalam undang-undang dan hak mereka tidak terhakis akibat ketiadaan kertas siasatan secara fizikal. Apa yang penting ialah bahawa permohonan reman disokong oleh alasan yang sah dan mencukupi, tertakluk kepada penilaian kehakiman bebas oleh majistret terhadap permohonan tersebut dan bahan sokongannya. Catatan dalam diari polis, yang dikemukakan selaras dengan KTJ, merupakan asas utama bagi majistret menentukan sama ada penahanan lanjut adalah wajar (lihat perenggan 33–34). E F
- (5) Hujahan bahawa membenarkan pegawai selain IO mengendalikan permohonan reman akan menjejaskan kebebasan individu atau menggalakkan amalan ‘tangkap dahulu, siasat kemudian’ adalah tidak bermerit. Hujahan tersebut gagal menyedari bahawa perlindungan asas bergantung kepada penyeliaan kehakiman oleh majistret dan bukannya kehadiran peribadi IO. Selagi kehendak undang-undang dipenuhi dan majistret berada dalam kedudukan untuk melaksanakan budi bicara kehakiman yang bermaklumat, keadilan serta integriti proses tersebut tetap terpelihara (lihat perenggan 37). G H
- (6) Akan wujud keadaan di mana IO yang mengendalikan sesuatu siasatan tidak dapat hadir secara peribadi di hadapan majistret untuk menyokong permohonan reman. Menghujahkan bahawa hanya IO yang ditugaskan secara langsung ke atas kes boleh mengendalikan prosiding adalah tidak praktikal dan terlalu membebankan serta boleh mengganggu kelancaran pentadbiran sistem keadilan jenayah, menjejaskan kecekapan operasi I

- A pasukan polis dan akhirnya menghalang proses siasatan (lihat perenggan 40).]

Cases referred to

- B *Chong Yong Yew v PP* [2010] 6 CLJ 938, HC (folld)
Dasthigeer B Mohamed Ismail v Kerajaan Malaysia & Anor [1999] MLJU 121; [1999] 6 CLJ 317, HC (refd)
Datuk Seri Khalid bin Abu Bakar & Ors v N Indra al/p P Nallathamby (the administrator of the estate and dependent of Kugan a/l Ananthan, deceased) and another appeal [2015] 1 MLJ 353; [2014] 9 CLJ 15, CA (refd)
 C *Lei Meng v Inspektor Wayandiana bin Abdullah & Ors and other appeals* [2022] 3 MLJ 203; [2022] 3 CLJ 177, FC (refd)
Quek Qin Long dan lain-lain lwn Pendakwa Raya [2025] 7 MLJ 264; [2024] 10 CLJ 625, HC (refd)
 D *Re the Detention of Muhammad Nasrul Naim bin Mohd Nazim* [2025] 8 MLJ 16; [2025] 1 CLJ 796, HC (folld)

Legislation referred to

- Criminal Procedure Code ss 28(3), 110(3), 117, 117(1), (3), 119, 119(1)
 Dangerous Drugs Act 1952 s 15(1)(a)
 E Federal Constitution art 5, 5(4)
 Poisons Act 1952 s 30(3), 31A

Appeal from: *Romika bin Che Kamarulzaman dan satu lagi lwn Pendakwa Raya* [2025] MLJU 1447 (High Court, Kuala Lumpur)

- F *Saiful Edris bin Zainuddin (with Zaki Asyraf bin Zubir and Zander Lim Wai Keong) (Attorney General's Chambers) for the appellant.*
Collin Arvind Andrew (with Shahlini Sree Kumar) (Collin's Law Chambers) for the respondents.
 G *N Sivananthan a/l Nithyanantham (with Jhaimal Singh Korotana) amicus curae for the Bar Council Malaysia.*

Mohamed Zaini Mazlan JCA:

H INTRODUCTION

- [1] This appeal concerns the interpretation and application of s 117 of the Criminal Procedure Code ('the CPC'), which regulates the procedure for remand of suspects following arrest. The central issue before us is whether only
 I the investigating officer ('IO') directly in charge of an investigation may appear before the magistrate to support a remand application, or whether another officer may lawfully do so in circumstances where the IO is unable to attend.

[2] The High Court, in its ruling, held that the strict requirement under

s 117 of the CPC mandates the personal attendance of the IO in charge. This interpretation, according to the appellant, has created significant operational difficulties for the police force and risks undermining the effectiveness of criminal investigations.

A

[3] We are therefore tasked in this appeal to determine whether the High Court's construction of s 117 of the CPC was correct in law.

B

BRIEF FACTS

[4] The respondents were arrested by the police on 5 May 2025 on suspicion of committing offences under s 30(3) of the Poisons Act 1952 and s 15(1)(a) of the Dangerous Drugs Act 1952. They were subsequently brought before the Jinjang Magistrate Court the following day, for remand proceedings under s 117 of the CPC.

C

D

[5] The remand application was made by Sergeant Major Aida, who appeared on behalf of the IO assigned to the case, Inspector Megat Nazmi. The learned magistrate allowed the police's application and authorised the respondents to be remanded for two days. On the same day, the respondents' solicitors sent a letter to the Kuala Lumpur High Court, dated 6 May 2025, requesting that the High Court exercise its revisionary powers to review the remand order granted by the magistrate's court. The High Court agreed to conduct a review after reviewing the records of the remand proceedings from the magistrate's court, and heard the parties involved the following day.

E

F

THE HIGH COURT'S DECISION

[6] The respondents raised three issues to support their application for revision. The issues presented were:

G

- (a) question of law: the remand order is inconsistent with the provisions of s 117(1) and s 110(3) of the CPC;
- (b) the representative of the IO has no authority under s 31A of the Poisons Act 1952 to make the remand application; and
- (c) the remand application is baseless as it involves an investigation under s 15(1)(a) of the Dangerous Drugs Act 1952 against two suspects.

H

[7] The appellant however submitted that the application for revision has been rendered academic as the respondents had already been charged earlier in the day and are no longer under remand. However, the High Court referred to the Federal Court's judgment in *Lei Meng v Inspektor Wayandiana bin Abdullah & Ors and other appeals* [2022] 3 MLJ 203; [2022] 3 CLJ 177 and held that it has a constitutional duty to assess the validity of a detention as long as the

I

A respondents were in custody at the time the application was filed. Therefore, the subsequent release or charging of the appellants does not make the application academic. Since the appellants were under remand when the application for revision was submitted, the High Court affirmed that it retains the jurisdiction to examine the legality of that remand.

B

[8] On the first issue raised by the respondents, the High Court opined that the wording of s 117(1) of the CPC is unambiguous and must be given its literal interpretation. The High Court held that provisions of s 117(1) of the CPC must be adhered to strictly, and that as the section stipulates that the IO making the investigation shall transmit to the magistrate a copy of the entries in the diary and produce the accused before the magistrate, that duty cannot be delegated to another police officer. The court also referred to two other High Court cases, namely *Quek Qin Long dan lain-lain lwn Pendakwa Raya* [2025] 7 MLJ 264; [2024] 10 CLJ 625 and *Re the Detention of Muhammad Nasrul Naim bin Mohd Nazim* [2025] 8 MLJ 16; [2025] 1 CLJ 796. The High Court concurred with the decision in *Quek Qin Long* which held that an IO cannot delegate his duties under s 117 of the CPC to another officer. In contrast, the High Court disagreed with the decision in *Muhammad Nasrul* where it was held that any officer with knowledge of the case who can respond to the magistrate's queries may make the remand application.

D

E

[9] The High Court also referred to *the Chief Justice's Practice Direction No 11 of 2021* and highlighted that the Practice Direction itself stipulates that a remand application must be made by the IO. In conclusion, the High Court held that the remand proceedings against the respondents at the magistrate's court violated the provisions of s 117(1) of the CPC. The High Court emphasised that the learned magistrate should have dismissed the remand application since it was made by an officer not officially designated as the IO for the case.

F

G

[10] The High Court therefore held that the respondents' detention under the remand order was unlawful. Given these findings, the court determined that it was unnecessary to consider the two other issues raised by the respondents.

H

THE APPEAL

[11] The central issue in this appeal is whether s 117(1) of the CPC requires the IO assigned to the case to personally appear before the magistrate in support of a remand application, or whether another police officer may lawfully do so in his stead.

I

[12] The appellant's counsel argued that the High Court's interpretation of

s 117(1) was overly rigid and impractical, thus undermining the main purpose of the section. Learned counsel contended that as long as the essential requirements of the section are met, any police officer should be able to conduct the remand proceedings before the magistrate. The essential requirements include:

- (a) transmitting to the magistrate a copy of the entries in the diary; and
- (b) producing the accused before the magistrate.

[13] Learned counsel also drew parallels to ‘The Chief Justice’s Practice Direction No 11 Year 2021’, particularly r 4, which outlines the same prerequisites. Rule 4 reads as follows:

4 Selaras dengan peruntukan seksyen 117 KTJ, Pegawai Penyiasat Polis hendaklah memastikan pematuhan kepada perkara-perkara yang berikut:

- (a) sebelum Permohonan Reman didengar di hadapan Majistret, dokumen-dokumen yang berikut telah difailkan melalui sistem e-Kehakiman:
 - (i) Permohonan Reman;
 - (ii) salinan diari siasatan yang lengkap di bawah seksyen 119 KTJ; dan
 - (iii) apa-apa dokumen lain yang permohonan reman tersebut; dan berkaitan dengan
- (b) orang yang disyaki (‘OYDS’) dikemukakan di hadapan Majistret.

[14] Learned counsel emphasised that as long as the prerequisites outlined in s 117(1) of the CPC and the relevant practice direction are met by the IO, there is no legal requirement for the IO to personally conduct the remand proceedings. Instead, any police officer knowledgeable about the case may handle them.

[15] Furthermore, it was argued that the High Court’s strict interpretation of the phrase ‘police officer making the investigation’ as exclusively referring to the IO in charge undermines the main purpose of s 177 of the CPC. This phrase is neither clearly defined in the CPC nor in the applicable practice direction. Learned counsel argued that the phrase can have two interpretations: it may refer either to the IO assigned to the case or to any IO present during the remand proceedings who is capable of making the application on behalf of the assigned IO. It was submitted that even if the interpretation of the phrase is to be taken strictly, meaning that only the assigned IO can make the remand application, there is no requirement for the IO to be physically present during the remand proceedings. The IO is only obligated to provide a copy of the police diary to the magistrate and ensure the attendance of the accused. The primary focus of s 117 is to allow the police to extend the remand order in order

A to complete the investigation, rather than emphasising the identity of the officer appearing before the magistrate.

B [16] In conclusion, the appellant's learned counsel urged the court to consider the practical challenges faced by the police if only the IO for the case is required to appear before the magistrate. Requiring the IO to do so within twenty-four hours of an arrest is not feasible, as the IO manages multiple cases and faces operational constraints, particularly due to a lack of sufficient manpower within the police force.

C [17] Learned counsel for the appellant also submitted that this court should favour the High Court's judgment in the case of *Re Mohd Nasrul Naim*, which held that any police officer may conduct remand proceedings, provided that the officer is authorised and knowledgeable about the circumstances of the remand in order to adequately respond to the magistrate's questions.

D [18] Conversely, learned counsel for the respondent argued that the wordings in s 117 of the CPC is clear and unambiguous, and emphasised that the IO assigned to the case has the responsibility to be present during the remand proceedings. Learned counsel for the respondents submitted that the ordinary and natural meaning of the section should not be compromised for the sake of convenience, and that the literal meaning should be upheld.

E [19] It was argued that the phrase 'police officer making the investigation' is clear and refers explicitly to the IO in charge of that case, rather than any other police officer. Additionally, learned counsel emphasised that s 117 should be considered in conjunction with s 117(3) and s 119(1) of the CPC, where the phrase 'police officer making the investigation' appears again. These sections clearly assign the duty to the IO for that specific case only.

F [20] It was also argued by the respondents' counsel that s 117(1) of the CPC must be strictly interpreted, as it infringes upon an accused person's liberty. An accused can be detained for up to seven or 14 days under an order issued by a magistrate. The counsel contended that s 117(1) of the CPC was amended in 2006 to prevent the police from misusing their powers through the practice of 'arrest first, investigate later', and to curb the issue of chain remands.

G [21] The submissions made by the Bar Council, acting as *amicus curiae*, are largely in agreement with the arguments presented by the respondents.

H
I
FINDINGS

[22] A suspect arrested by the police can only be held in custody for a maximum of 24 hours, excluding the time taken to travel from the arrest

location to the magistrate's court, as outlined in s 28(3) of the CPC. If the police require additional time to complete their investigation, they must apply to a magistrate for an extension of the suspect's detention. This period of detention while the investigation is ongoing is known as 'remand'. The statutory framework governing remand proceedings is set out in s 117 of the CPC:

117 Procedure where investigation cannot be completed within twenty-four hours

(1) Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 28 and there are grounds for believing that the accusation or information is well founded the police officer making the investigation shall immediately transmit to a Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case and shall at the same time produce the accused before the Magistrate.

(1A) The Public Prosecutor may appear in any application made under this section.

(2) The Magistrate before whom an accused person is produced under this section may, whether he has or has no jurisdiction to try the case, authorise the detention of the accused in such custody as follows:

- (a) if the offence which is being investigated is punishable with imprisonment of less than fourteen years, the detention shall not be more than four days on the first application and shall not be more than three days on the second application; or
- (b) if the offence which is being investigated is punishable with death or imprisonment of fourteen years or more, the detention shall not be more than seven days on the first application and shall not be more than seven days on the second application.

(3) The officer making the investigation shall state in the copy of the entries in the diary referred to in subsection (1), any period of detention of the accused immediately prior to the application, whether or not such detention relates to the application.

(4) The Magistrate, in deciding the period of detention of the accused person, shall take into consideration any detention period immediately prior to the application, whether or not such detention relates to the application.

(5) The Magistrate in deciding the period of detention of the accused shall allow representations to be made either by the accused himself or through a counsel of his choice.

(6) If the Magistrate has no jurisdiction to try the case and considers further detention unnecessary he may order the accused person to be produced before a Magistrate having such jurisdiction or, if the case is triable only by the High Court, before himself or another Magistrate having jurisdiction with a view to transmission for trial by the High Court.

(7) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

- A [23] The *Chief Justice's Practice Direction No 11 of 2021*, which came into force on 10 September 2021, is to be read in conjunction with s 117 of the CPC. The practice direction provides comprehensive guidance on the conduct of remand proceedings, and is reproduced in full as follows:
- B ARAHAN AMALAN KETUA HAKIM NEGARA
BILANGAN 11 TAHUN 2021
PENGENDALIAN PROSIDING PERMOHONAN REMAN DIBAWAH
SEKSYEN 117 KANUN TATACARA JENAYAH
- C PADA menjalankan kuasa yang diberikan oleh seksyen 107A Akta Mahkamah Rendah 1948 [Akta 92], saya, setelah berunding dengan YAA Presiden Mahkamah Rayuan, YAA. Hakim Besar Mahkamah Tinggi di Malaya dan YAA Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak, mengeluarkan Arahan Amalan ini bagi mengemas kini tatacara dan memastikan keseragaman amalan berhubung dengan
- D pengendalian prosiding Permohonan Reman di bawah seksyen 117 Kanun Tatacara Jenayah [Akta 593] ('KTJ') bagi Mahkamah di seluruh Malaysia seperti yang berikut:
- E PEMAKAIAN ARAHAN AMALAN
2. Arahan Amalan ini terpakai bagi pengendalian prosiding Permohonan Reman di bawah seksyen 117 KTJ di seluruh Malaysia.
- F TAFSIRAN
3. Dalam Arahan Amalan ini, melainkan jika konteksnya menghendaki makna yang lain —
- G 'Majistret' mempunyai erti yang sama sebagaimana yang diperuntukkan dalam Akta Mahkamah Rendah 1948;
- 'Permohonan Reman' ertinya apa-apa permohonan yang dikemukakan oleh Pegawai Penyiasat Polis di hadapan Majistret bagi mendapatkan suatu perintah tahanan di bawah seksyen 117 KTJ;
- 'sistem e-Kehakiman' ertinya mana-mana sistem aplikasi Mahkamah yang dibangunkan oleh Pejabat Ketua Pendaftar Mahkamah Persekutuan Malaysia bagi urusan dan prosiding Mahkamah.
- H TATACARA PENGENDALIAN PROSIDING PERMOHONAN REMAN DIBAWAH SEKSYEN 117 KANUN TATACARA JENAYAH
- 4 Selaras dengan peruntukan seksyen 117 KTJ, Pegawai Penyiasat Polis hendaklah memastikan pematuhan kepada perkara-perkara yang berikut:
- I (a) sebelum Permohonan Reman didengar di hadapan Majistret, dokumen-dokumen yang berikut telah difailkan melalui sistem e-Kehakiman:
- (i) Permohonan Reman;
- (ii) salinan diari siasatan yang lengkap di bawah seksyen 119 KTJ; dan

- (iii) apa-apa dokumen lain yang berkaitan dengan permohonan reman tersebut; dan A
 - (b) orang yang disyaki ('OYDS') dikemukakan di hadapan Majistret.
- 5. Sebelum pengendalian prosiding Permohonan Reman dimulakan, OYDS hendaklah mengesahkan kepada Majistret perkara-perkara yang berikut: B
 - (a) bagi OYDS yang mempunyai peguam, OYDS telah diberi peluang untuk menghubungi peguamnya; dan
 - (b) bagi OYDS yang belum melantik peguam, OYDS telah menyatakan hasrat untuk diwakili oleh mana-mana peguam pilihannya. C
- 6. Bagi OYDS yang tidak diwakili oleh peguam atau tidak berkeupayaan untuk melantik peguam, OYDS tersebut akan dimaklumkan oleh Majistret akan hak OYDS untuk mendapatkan khidmat bantuan guaman daripada Yayasan Bantuan Guaman Kebangsaan ('YBGK') sekiranya OYDS memenuhi syarat-syarat yang berikut: D
 - (a) OYDS adalah seorang warganegara; dan
 - (b) OYDS tidak disiasat di bawah mana-mana undang-undang pencegahan, penculikan dan melarikan orang.
- 7. Bagi maksud perenggan 5 dan 6, Pegawai Penyiasat Polis hendaklah memastikan bahawa, bagi OYDS yang — E
 - (a) telah melantik peguam, peguam yang mewakili OYDS telah dihubungi;
 - (b) belum melantik peguam, tetapi berhasrat untuk melantik peguam pilihannya sendiri, peguam tersebut telah dihubungi; atau F
 - (c) berhasrat untuk mendapatkan perkhidmatan peguam YBGK, pihak YBGK telah dihubungi, dan peguam tersebut telah dimaklumkan agar hadir bagi tujuan pengendalian prosiding Permohonan Reman tersebut. G
- 8. Tertakluk kepada perenggan 7, pengendalian prosiding Permohonan Reman hendaklah ditangguhkan kepada suatu tempoh masa yang munasabah, dalam hari yang sama, bagi membolehkan peguam hadir untuk mewakili OYDS.
- 9. Walau apa pun peruntukan dalam perenggan 8, pengendalian prosiding Permohonan Reman akan diteruskan sekiranya — H
 - (a) OYDS tidak mahu diwakili oleh peguam dan/atau enggan mendapatkan khidmat bantuan guaman YBGK; atau
 - (b) tiada peguam yang hadir setelah tempoh masa munasabah diberikan.
- 10. Semasa mengendalikan prosiding Permohonan Reman, Majistret hendaklah dimaklumkan oleh — I
 - (a) Pegawai Penyiasat Polis berkaitan dengan status Permohonan Reman tersebut sama ada ia adalah suatu Permohonan Reman baharu atau lanjutan;

- A** (b) OYDS berkaitan dengan layanan terhadapnya semasa dalam tahanan pihak polis; dan
- (c) OYDS berkaitan dengan keadaan kesihatannya.
- B** 11. Bagi maksud perenggan 10(c), sekiranya Majistret mendapati bahawa OYDS memerlukan rawatan, Pegawai Penyiasat Polis hendaklah memastikan bahawa OYDS tersebut dibawa ke hospital bagi tujuan pemeriksaan dan rawatan yang sewajarnya.
12. Semasa pengendalian prosiding Permohonan Reman, Peguam OYDS hendaklah mengemukakan representasi kepada Majistret.
- C** 13. Tanpa menjejaskan kuasa dan budi bicara untuk mempertimbangkan Permohonan Reman serta menetapkan tempoh bagi apa-apa perintah reman yang akan diberikan, Majistret dalam menjalankan kuasanya boleh membuat rujukan kepada keputusan-keputusan kes Mahkamah Atasan yang terkini dan Bench Book (Criminal Law) yang dikeluarkan oleh Badan Kehakiman Malaysia yang menyentuh mengenai isu reman.
- D** SUSUNAN KEUTAMAAN BAGI PENGENDALIAN PROSIDING PERMOHONAN REMAN DALAM KETIADAAN MAJISTRET
- E** 14. Dalam ketiadaan Majistret, prosiding Permohonan Reman yang melibatkan siasatan berkenaan apa-apa kesalahan jenayah —
- (a) yang boleh dihukum dengan hukuman mati atau penjara untuk tempoh 14 tahun atau lebih;
- F** (b) yang melibatkan OYDS yang merupakan individu berprofil tinggi;
- (c) di bawah Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 [Akta 694]; dan
- (d) yang disifatkan sebagai berkepentingan awam,
- G** hendaklah dikendalikan oleh Majistret ex-officio mengikut keutamaan seperti yang berikut:
- (a) Hakim Mahkamah Sesyen;
- H** (b) Timbalan Pendaftar Mahkamah Tinggi di Malaya (bagi Permohonan Reman di Semenanjung Malaysia sahaja);
- (c) Penolong Kanan Pendaftar Mahkamah Tinggi di Malaya (bagi Permohonan Reman di Semenanjung Malaysia sahaja);
- (d) Penolong Kanan Pendaftar Mahkamah Rendah; atau
- I** (e) mana-mana pegawai lain seperti yang disenaraikan di bawah Jadual Keempat Akta Mahkamah Rendah 1948.
- LOKASI DAN HARI PENGENDALIAN PROSIDING PERMOHONAN REMAN
15. Semua prosiding Permohonan Reman hendaklah dikendalikan —

- (a) di Mahkamah atau di mana-mana pusat tahanan yang telah diwartakan untuk tujuan reman; dan A
- (b) pada setiap hari termasuk hari cuti hujung minggu dan cuti umum.

TARIKH PERMULAAN KUAT KUASA

16. Arahan Amalan ini mula berkuat kuasa pada 15 September 2021. B

PEMBATALAN

17. Arahan Amalan Ketua Hakim Negara Bil. 3/2003 Perintah Penahanan di bawah Seksyen 117 Kanun Prosedur Jenayah (KPJ) dan perenggan 2A Pekeliling Ketua Pendaftar Bil. 1 Tahun 2012 (Garis Panduan Reman dan Pengendalian Kes-Kes Jenayah Selaras Dengan Penubuhan Yayasan Bantuan Guaman Kebangsaan) adalah dibatalkan. C

TUN TENGKU MAIMUN BINTI TUAN MAT

Ketua Hakim Negara D

Istana Kehakiman

Putrajaya

[24] The primary purpose of a remand is to allow the police additional time to complete their investigations. A remand is a temporary detention ordered by a magistrate for this purpose. E

[25] It is important to approach remand proceedings and any resulting orders with seriousness, as they concern the fundamental right to an individual's freedom: *Dasthigeer B Mohamed Ismail v Kerajaan Malaysia & Anor* [1999] MLJU 121; [1999] 6 CLJ 317 (HC). Unlike an individual convicted after a trial, a person remanded is presumed innocent. Every day spent in custody constitutes a deprivation of liberty, and such deprivation must therefore be strictly justified in accordance with the law. F
G

[26] It is therefore incumbent upon the police to satisfy the magistrate as to the necessity of a remand order. This is achieved through the production of the police diary, the contents of which are prescribed under s 119(1) of the CPC. The importance of the diary in remand proceedings cannot be overstated. When a magistrate exercises powers of remand under s 117 of the CPC, the magistrate is engaged in a judicial function that obliges him to scrutinise whether the circumstances of the case justify continued detention. This principle was firmly established in *Datuk Seri Khalid bin Abu Bakar & Ors v N Indra a/p P Nallathamby (the administrator of the estate and dependent of Kugan a/l Ananthan, deceased) and another appeal* [2015] 1 MLJ 353; [2014] 9 CLJ 15 (CA). Accordingly, the failure to produce the diary before the magistrate will invalidate the remand application. Consequently, any remand order issued without the diary being provided will also be considered unlawful. H
I

A [27] In addition, s 117 of the CPC prescribes several other mandatory safeguards, including the requirement that the accused be physically produced before the magistrate and the obligation on the magistrate to record written reasons should a remand be granted. We will not address these other requirements here, as the central issue in this appeal is whether the IO in charge
 B of the case must personally be present during remand proceedings.

C [28] We have carefully examined s 117(1) of the CPC to determine whether it imposes a mandatory requirement for the presence of the IO at remand proceedings. The operative words of the provision are: ‘the police officer making the investigation shall immediately transmit to a magistrate a copy of the entries in the diary hereinafter prescribed relating to the case and shall at the same time produce the accused before the magistrate’. From these wordings, we are not persuaded that Parliament intended to make the physical presence of
 D the IO mandatory. In our judgment, the statutory duty of the IO under s 117 of the CPC is confined to two specific obligations:

- (a) to transmit to the magistrate a copy of the relevant entries in the police diary; and
- E (b) to ensure that the accused is produced before the magistrate. These obligations are both clear and exhaustive. Section 117 does not, in express terms or by necessary implication, stipulate that the IO for the case must personally attend and present the application for remand. The crucial safeguard lies in the transmission of the case diary, which enables
 F the magistrate to exercise judicial scrutiny on the necessity of further detention.

G [29] Where the police seek an extension of remand beyond the constitutional limit of twenty-four hours, they must demonstrate to the satisfaction of the magistrate that investigations cannot reasonably be completed within that time and that there are sufficient grounds to believe the accusation or information is well-founded. This duty is discharged when the IO transmits the relevant diary entries for the magistrate’s evaluation. The operative word used by Parliament is ‘transmit’, a term that plainly denotes the act of forwarding or sending, and not the requirement of personal attendance.
 H Had Parliament intended to make the physical presence of the IO mandatory, such a requirement would have been expressly stated.

I [30] We are therefore unable to accept the argument that s 117 of the CPC obliges the IO to be present at every remand application. This will entail in adding words that are not found in the statute, and could lead to rigidity in the administration of justice, a result that Parliament could not have intended.

[31] We further observe that there are likewise no express provisions in *The*

Practice Direction No 11 of 2021 requiring the presence of the IO during remand proceedings. The practice direction, which came into force on 10 September 2021, was intended to streamline and modernise the procedure for remand applications. Its requirements substantially mirror those set out in s 117 of the CPC. Specifically, it provides that the relevant documents, namely, the police diary entries and supporting materials, must be transmitted by the IO and filed through the court's *e-Kehakiman* system. The emphasis is thus placed upon the timely and proper transmission of documentary materials for the magistrate's scrutiny, rather than upon the physical attendance of the IO before the magistrate. In our view, the practice direction reinforces, rather than alters, the statutory position under s 117 of the CPC.

A

B

C

[32] The absence of the IO during remand proceedings does not jeopardise the liberty of the accused or undermine the constitutional guarantees provided under art 5 of the Federal Constitution. It is important to note that s 117 of the CPC includes safeguards designed to protect individuals against arbitrary detention. The requirement for the accused to be presented before the magistrate, the obligation to submit relevant diary entries under s 119, and the duty of the magistrate to document reasons in writing if a remand is granted collectively serves as a check and balance against any abuse of power.

D

E

[33] When presiding over a remand application, the magistrate is not merely acting as a rubber stamp for the police. Instead, the magistrate performs a judicial function that requires thorough examination of the application and the supporting materials. The exercise of this judicial discretion does not depend on the personal presence of the IO but rather on the adequacy and credibility of the investigation and the circumstances presented. The entries in the police diary, submitted in accordance with the CPC, form the central basis for the magistrate's determination of whether further detention is warranted.

F

G

[34] The absence of the IO at the hearing does not compromise the integrity of the process or disadvantage the accused. The accused is still protected by the statutory and constitutional safeguards embedded in the law, and their rights are not diminished due to the IO's physical absence. What is crucial is that the remand application is backed by lawful and adequate grounds, subject to the magistrate's independent judicial assessment. Therefore, we find no reason to conclude that the non-attendance of the IO invalidates or undermines the fairness of the remand proceedings.

H

I

[35] The rights of the accused are well-protected under s 117 of the CPC. A key protection is the requirement for the accused to be presented before the magistrate during remand proceedings, ensuring transparency and accountability in the process. Additionally, the accused has the right to be

A represented by legal counsel, who can raise objections and challenge the necessity of the remand.

B [36] The magistrate has a statutory duty to carefully examine the application and assess whether continued detention is justified. If the order for remand is granted, the magistrate is required to provide written reasons for this decision. These protections are further strengthened by art 5(4) of the Federal Constitution, which allows the magistrate to extend the detention period beyond the initial twenty-four hours only if the circumstances of the case justify such an extension.

C [37] Given these safeguards, we find no merit in the argument presented by the respondents that allowing officers other than the IO to handle the remand application would undermine individual liberty or promote the troubling practice of ‘arrest first, investigate later’. This argument fails to recognise that the essential safeguards depend on judicial oversight by the magistrate, rather than the personal presence of the IO. As long as the statutory requirements are met and the magistrate is in a position to exercise informed judicial discretion, the fairness and integrity of the process are preserved.

E [38] We therefore approve the decisions made by the High Court in the cases of *Muhammad Nasrul Naim* and *Chong Yong Yew v Public Prosecutor* [2010] 6 CLJ 938. In both these cases, the courts were clear in holding that the physical presence of the IO at remand proceedings is not a mandatory requirement under s 117 of the CPC.

CONCLUSION

G [39] We are mindful of the appellant’s concerns arising from the decision of the High Court, particularly its impact on the practical and operations of the police force. It is common knowledge that an IO is often tasked with handling numerous cases simultaneously. In the discharge of their duties, an IO may also be required to attend court proceedings as witnesses, participate in official training programmes, or, may at times, be incapacitated due to illness or other unforeseen circumstances.

I [40] The statutory requirement under art 5(4) of the Federal Constitution and s 117 of the CPC mandates that a suspect be produced before a magistrate within 24 hours of arrest. Given this strict constitutional timeline, there will inevitably be situations where the IO in charge of the investigation is unable to appear personally before the magistrate to support a remand application. To insist that only the IO directly assigned to the case may conduct such proceedings would be impractical, unduly burdensome, and could disrupt the smooth administration of criminal justice. Such a rigid interpretation would

impair the operational efficiency of the police force and ultimately hinder the investigative process.

[41] We are therefore of the view that the High Court erred in its interpretation of s 117 of the CPC. Allowing the ruling to stand would impose unnecessary rigidity on remand proceedings and prevent investigations from being conducted effectively. This misdirection in law necessitates appellate intervention. The appeal is allowed and the decision the High Court is therefore set aside.

Appeal allowed; and High Court's decision set aside.

Reported by Ashok Kumar

A

B

C

D

E

F

G

H

I